

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LISA MACHELL KELLEY,

Plaintiff,

v.

CIVIL NO. 1:22-CV-36
(KLEEH)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 15], GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [ECF NO. 12], AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [ECF NO. 13]

On April 27, 2022, the Plaintiff, Lisa Michell Kelley ("Plaintiff"), filed a Complaint against the Commissioner of Social Security ("Defendant"). Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge James P. Mazzone (the "Magistrate Judge") for review. The parties filed cross motions for summary judgment. On March 27, 2023, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court grant Plaintiff's motion for summary judgment, deny Defendant's motion for summary judgment, and remand the case for further administrative proceedings.

The R&R informed the parties that they had fourteen (14) days from the date of service of the R&R to file "written objections identifying the portions of the Report and Recommendation to which

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objection is made, and the basis for such objection." It further warned them that the "[f]ailure to timely file objections . . . will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation." Both parties received the R&R, but no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 15]. Plaintiff's motion for summary judgment is **GRANTED** [ECF No. 12]. Defendant's motion for summary judgment is **DENIED** [ECF No. 13]. This action

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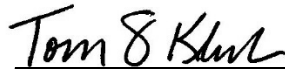
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is **REMANDED** for further administrative proceedings, consistent with the recommendation in the R&R. This case is **STRICKEN** from the Court's active docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record.

DATED: May 17, 2023

Handwritten signature of Thomas S. Klee in black ink.

THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA